

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

No. 16-15085

COLLEEN CHRISTENSEN,

Debtor.

EDMUND J. WOOD, Trustee of the Estate of
Colleen Christensen,

Adv. No.

Plaintiff,

COMPLAINT FOR AVOIDANCE OF TAX
PENALTIES AND INTEREST AND
SUBORDINATION OF CLAIM

vs.

UNITED STATES OF AMERICA, on behalf
of its agency, the DEPARTMENT OF THE
TREASURY, and its bureau, the INTERNAL
REVENUE SERVICE,

Defendant.

COMES NOW the Trustee, Edmund J. Wood, by and through the undersigned attorney,
and states and alleges as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff. Plaintiff is the duly appointed and acting Chapter 7 Trustee in the
Chapter 7 Bankruptcy Petition of the debtor above named. The Trustee is authorized to bring
this action pursuant to §§ 724 (a), 550 and 551 of the Bankruptcy Code and does so solely in his
capacity as Trustee for the estate of Colleen Christensen.

2. Debtor. The debtor filed the present Chapter 7 Bankruptcy Petition on October 6,

**COMPLAINT FOR AVOIDANCE OF TAX PENALTIES
AND INTEREST AND SUBORDINATION OF CLAIM - 1**

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1 2016.

2 3. Defendant. The Internal Revenue Service is a bureau of the Department of the
3 Treasury, which is an agency of the Defendant, the United States of America (hereinafter
4 referred to as "Defendant IRS").
5

6 4. This adversary proceeding is one arising in the Chapter 7 case of the above named
7 debtor now pending in this Court. This Court has jurisdiction over this adversary proceeding
8 pursuant to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §§ 724 and 550. This is a core proceeding
9 under 28 U.S.C. § 157 (b)(2)(A), (B), (K) and/or (O).
10

11 **II. FIRST CAUSE OF ACTION**

Avoidance of Tax Penalties and Interest - 11 U.S.C. § 724 (a)

12 5. Plaintiff re-alleges and incorporates by this reference each and every allegation
13 set forth in Paragraphs 1 through 4 above, inclusive, as though fully set forth herein.
14

15 6. On or about January 19, 2017, Defendant IRS filed a Proof of Claim in this
16 proceeding in the amount of \$290,312.81 (Claim No. 5-1). This claim was amended on January
17 20, 2017 (Claim No. 5-2) and again on January 27, 2017 (Claim No. 5-3).

18 7. Claim No. 5-3 includes penalties in the amount of \$47,030.87 and interest, in part
19 accruing on such penalties, in the total amount of \$73,131.54.

20 8. 11 U.S.C. § 724 (a) provides that the Trustee may avoid a lien that secures a claim
21 of a kind specified in § 726 (a)(4) of this Title.
22

23 9. In turn, 11 U.S.C. § 726 (a)(4) defines an allowed claim, whether secured or
24 unsecured, for any fine, penalty, or forfeiture arising before the earlier of an order for relief or
25 the appointment of a Trustee, to the extent that such fine or penalty is not compensation for
26 actual pecuniary loss suffered by the holder of the claim.
27

1 10. The taxes referred to above, as penalties, were not compensation for any
2 pecuniary loss suffered by Defendant IRS.

3 11. The taxes referred to in Defendant IRS' Claim No. 5-3 were assessed between
4 November 27, 2006 and November 30, 2009, and for which liens were recorded between
5 September 14, 2009 and December 28, 2011.
6

7 12. In accordance with the above, the penalties and the interest on such penalties
8 should be avoided in an amount up to \$120,162.41 pursuant to 11 U.S.C. § 724 and preserved for
9 the benefit of the estate pursuant to 11 U.S.C. § 551.
10

11 **III. SECOND CAUSE OF ACTION**

12 Tax Lien Subordinated to Costs of Administration - 11 U.S.C. § 724 (b)(2)

13 13. Plaintiff re-alleges and incorporates by this reference each and every allegation
14 set forth in Paragraphs 1 through 12 above, inclusive, as though fully set forth herein.

15 14. Claim No. 5-3 includes a secured tax claim in the amount of \$157,683.25 against
16 real property of the estate located at 3917 E Olive St, Seattle, WA (APN 5026900185) and
17 legally described as follows:

18 Lots 1 and 2, Block D, Madrona Heights Addition, according to the plat thereof recorded
19 in Volume 9 of Plats, page 100, records of King County, Washington.
20 Situate in the County of King, State of Washington.

21 15. 11 U.S.C. § 724 (b)(2) provides that property of the estate that is subject to a lien
22 that is not avoidable, and that secures an allowed claim for a tax, is to be distributed after the
23 payment of administrative expenses of the kind specified in 11 U.S.C. § 507 (a)(1)(C) and
24 allowed pursuant to 11 U.S.C. § 503 (b)(2).

25 16. Plaintiff is the holder of administrative expense claims as specified in 11 U.S.C. §
26 507 (a)(1)(c) and they should be allowed pursuant to 11 U.S.C. § 503 (b)(2), and paid prior to the
27

1 secured claim of Defendant IRS.

2 WHEREFORE, Plaintiff prays for judgment as follows:

3 a) For avoidance of Defendant IRS' penalties and interest in an amount up to
4 \$120,162.41 pursuant to 11 U.S.C. § 724, and preserved for the benefit of the estate pursuant to
5 11 U.S.C. § 551;
6

7 b) For subordination of Defendant IRS' secured claim in the amount of \$157,683.25
8 to costs of administration of the Chapter 7 Trustee herein; and

9 c) For such other and further relief as the Court deems equitable and just.

10 DATED this 11th day of May, 2017.
11

12 /s/ Kathryn A. Ellis

13 Kathryn A. Ellis, WSBA #14333

14 Attorney for Plaintiff

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